DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA
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| IN THE MATTER OF TRIANGLE | ) | July 20, 2006 |
| COMMUNICATIONS SYSTEM, INC., | ) | To: Commissioners, Martin, Kate |
| Application for Designation as an | ) | From: Mike Lee |
| Eligible Telecommunications Carrier | ) | DOCKET No. D2004.1.6 |

# FACT SHEET

Introduction

After a brief introduction, this Fact Sheet will summarize the procedural record. The testimony filed by TCS' witness Mr. Richard Stevens is summarized next. Finally, a summary of MCC witness Mr. Allen Buckalew's testimony is provided. Besides the staff, parties served extensive discovery that may become part of the evidentiary record. The hearing will commence on Thursday, August 10, 2006, at 1:00 p.m., at the Harlem City Hall, 10 1st Avenue S.W., Harlem, Montana.

On January 16, 2004, Triangle Communications System, Inc, (TCS), filed with the Montana Public Service Commission (MTPSC) its first petition for designation as an eligible telecommunications carrier (ETC).[1] TCS asserts that its designation will increase wireless access in rural service areas. The areas for which TCS seeks ETC designation include certain of the Montana exchanges served by its affiliates Triangle Telephone Cooperative Association, Inc. (TTCA) and Central Montana Communications, Inc., (CMC). In addition, its designation will serve the public interest (PI) by providing customers a choice of communications providers and a choice of communications technologies. TCS asserts that it has a fiduciary responsibility to seek ETC designation in the identified exchanges.

TCS asserts to have satisfied all requirements for it to be designated as an ETC. These requirements include that as a common carrier it offer the services using either its own facilities or a combination of its own facilities and resale of another carrier's services that federal universal service fund (FUSF) mechanisms support. In addition to being a common carrier, TCS will offer

[1] TCS filed on November 23, 2005 an amended petition and on January 20, 2006 a further

the services supported by federal universal service support mechanisms. Those nine services include: access to voice-grade service, access to free-of-charge local usage (defined as an amount of minutes of use of exchange service), dual tone multi-frequency (DTMF) signaling or its equivalent, single-party service, toll limitation for qualifying low-income consumers and access to emergency, operator, interexchange and directory services. TCS will provide all nine supported services.

TCS commits to meet additional requirements. TCS commits to advertise the availability of its services using media of general distribution. TCS adds that customers in rural areas are to have access to telecommunication and information services that are reasonably comparable to those services provided in urban areas and at rates that are reasonably comparable to rates charged for similar services in urban areas. TCS commits to comply with the MTPSC established PI related technical and service quality standards. TCS adds that its designation will provide it the financial ability to continue to provide universal service offerings. As a PI benefit, ETC designation will enhance TCS' ability to contribute to public safety needs.

## Procedural Background

After making its initial January 16, 2004 filing, TCS filed on February 13, 2004, and in conjunction with the Montana Independent Telecommunications Systems (MITS), a Motion to Stay or Suspend proceedings in this docket. TCS urged the MTPSC to "expedite rules establishing minimum service quality standards applicable to ETC designations and certifications." On April 28, 2004, the MTPSC denied the petitions to Stay or Suspend. On April 16, 2004, MITS filed on behalf of TCS a request to reactivate the schedule in this docket. On April 28, 2005, the MTPSC's ETC rules became effective.

On April 26, 2005, the MTPSC issued its Notice of Application and Intervention Deadline. On June 1, 2005 the MTPSC granted intervention to the following parties: Cable & Communications Corporation (CCC), Mid-Rivers Telephone Cooperative (MRTC), Montana Consumer Counsel (MCC), Montana Telecommunications Association (MTA), and 3 Rivers PCS

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amended petition. Both amendments are reviewed later.

Inc. On July 12, 2005, 3 Rivers PCS submitted its Notice of Withdrawal as an Intervenor. On July 25, 2005, TCS filed Stipulations and Agreements with each of CCC, MTA and MRTC asserting that MRTC, CCC and MTA stipulate and agree to not object to TCS' application as an ETC.

On November 23, 2005, MITS filed on behalf of TCS an amended petition for designation as an ETC. Whereas TCS' initial petition sought ETC designation for the entire study areas of TTCA and CMC, TCS' amended petition asks the MTPSC to "redefine" the service area for both TTCA and CMC.[2] The study areas would then represent the individual wire centers that fall

[2] The federal Telecommunications Act of 1996 ('96 Act) states that unless and until the FCC and the states establish, after accounting for recommendations by a Federal-State Joint Board (JB), a different definition, a rural company's service area is its study area. Section 214(e)(5) of the'96 Act provides that states, or the FCC, may establish geographic service areas within which competitive ETCs are required to comply with universal service obligations. The FCC adopted rules to allow for a process to change an ILEC's service area.
The FCC's rules provide the mechanism by which a state PSC may propose to redefine a rural ILEC's service area for purposes of determining universal service obligations and support. 47 C.F.R.§§54.207(a),(c) The FCC has authority to propose a service area redefinition on its own motion under section 54.207(d) of the FCC's rules, but such redefinition would not go into effect without the agreement of the relevant state PSC. 47 C.F.R.§54.207(d)
Under section 54.207(c)(1), a state PSC or other party seeking the FCC's agreement in redefining a service area shall submit a petition to the FCC. The petition must contain: (1) the definition proposed by the state PSC; and (2) the state PSC's ruling or other official statement presenting the state PSC's reason for adopting its proposed definition, including an analysis that takes into account the recommendations of any JB convened to provide recommendations with respect to the definition of a service area served by a rural carrier. 47 C.F.R.§54.207(c)(1) Section 54.207(c)(3) provides that the FCC may initiate a proceeding to consider a state PSC's proposal to redefine the area served by a rural ILEC within 90 days of the release date of the public notice (that must issue within 14 days of receipt of any petition). 47 C.F.R.§54.207(c)(3) If the FCC initiates a proceeding to consider the petition, the proposed definition will not take effect until both the state PSC and the FCC agree on the definition of a rural carrier service area, in accordance with section 214(c)(5) of the Act. If the FCC does not act on a petition to redefine a service area within 90 days of the release of the public notice, the definition proposed is deemed approved by the FCC and takes effect in accordance with state procedures. 47 C.F.R. §54.207(c)(3)(ii) TCS explained the procedural process that must occur if, and once, the MTPSC approves of its petition. DR PSC -009(a)

within TCS' licensed cellular wireless service area.[3]

TCS' filing references the FCC's March 17, 2005 Report and Order (CC 96-45, FCC 05-46, adopted February 25, 2005), the FCC's Highland Cellular order and its Virginia Cellular ETC Designation Order (VCO) asserting that they provide guidance on the procedures applicable to the redefinition of rural service areas. In its VCO, the FCC determined that when defining a service area other than the study area that it would: (1) consider minimizing cream skimming,[4] (2) recognize that the Telecommunications Act of 1996 ('96 Act) places rural telephone companies on a different competitive footing than other local exchange carriers (LECs)[5] and (3) recognize the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.[6]

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[3] TCS tried to offer wireless service ubiquitously in TTCA's and CMC's service areas but was unable to negotiate the purchase of some licenses held by Commnet Cellular. DR PSC -002 TCS added that Commnet Cellular has been acquired several times since the early 1990s and is now part of Gold Creek (dba Verizon Wireless). Gold Creek Cellular still owns the licenses and offers services with those licenses. DR PSC -023(a) and DR PSC -024(e) As for whether Commnet's license is the only other option that TCS had the right to acquire, TCS explained that it could acquire the 800Mhz licenses by purchasing them. Stevens, however, is unaware of a willing seller in either TTCA's or CMC's service areas; still, a business case must be made. Using a business case model, no case would justify the costs of extending services to the unserved areas. DR PSC -024(b)

[4] Rural cream skimming occurs when competitors serve only the low-cost high revenue customers in a rural telephone company's study area. TCS asserts to not cream skim.

[5] TCS asserts that nothing would affect the regulatory treatment of either TTCA or CMC, adding that the FCC has determined the redefinition of the study area does not affect the embedded costs of "the company" or the amount of universal service support that it receives (citing the FCC's VCO, paragraphs 41 and 43).

[6] TCS asserts that the administrative ease of calculating costs on a less-than-study area level is not an issue because any federal universal service support available to TCS is based on the per-line support available to the incumbent ETCs. TCS adds that the FCC determined, in the VCO, that redefining the rural telephone company service areas will not require the rural telephone companies to determine their costs or a basis other than the study area level. TCS further added that the redefinition does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor how they must comply with these rules.

TCS asserts in its November 25, 2006 amended application that it will demonstrate why a market area redefinition is in the PI. The impact of TCS' amended filing is to limit the wire centers that would comprise the redefined study areas. In the case of TTCA, the exchanges in the "redefined" study area that are applicable to TCS include: Chinook, Turner, Hays, Whitewater, South Malta and Chester. In the case of CMC, the exchanges in the "redefined" study area applicable to TCS include: Harlem and Malta.[7]

On January 20, 2006, MITS filed on behalf of TCS a further amended petition. This amended petition requests that the MTPSC redefine the service area for both TTCA and CMC, from each company's respective study area, to include individual wire centers that fall within TCS' licensed cellular wireless service area.

In addition to appending the testimony of Mr. Richard Steven's, that is reviewed later in this Fact Sheet, this further amended petition corrects the list of CMC wire centers identified for the proposed "redefined study area applicable to TCS" to add the Dodson exchange. Therefore, the TTCA exchanges in the "redefined" study area that are applicable to TCS include: Chinook, Turner, Hays, Whitewater, South Malta and Chester. The CMC exchanges in the "redefined" study area applicable to TCS include: Harlem, Malta and Dodson.[8]

On January 30, 2006, the MTPSC issued an Amended Notice of Application and Intervention Deadline establishing March 2, 2006, as the deadline to file for intervention. On February 14, 2006, and although a procedural schedule had not issued, the MCC submitted data requests to TCS. TCS filed on February 21, 2006, its objections to certain MCC data requests (DR MCC -008 and -009).

On March 7, 2006, the MTPSC issued a Notice of Staff Action that granted intervention to: 3 Rivers Telephone Cooperative (3RTC), CCC, MRTC, MCC and MTA. On March 15,

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[7] TCS explained later that in order to meet its 98% coverage requirement if it is designated, it intends to serve the unserved areas at Cherry Ridge, Turner, Cleveland and Savoy. DR PSC -006(b)

[8] TCS will not seek FUSFs for a customer who lives outside the redefined TCS licensed area. DR PSC -009(b)

2006, MRTC and CCC filed stipulations asserting to agree to the MTPSC's designation of TCS as an ETC.

On March 31, 2006, the MTPSC issued a Procedural Order (No. 6723). On March 31, 2006, the MTPSC also issued a NCA on TCS' objections to the MCC's discovery. On April 13, 2006, MITS filed on behalf of TCS a Motion for Reconsideration (and brief) regarding the MTPSC's March 31, 2006 NCA. On May 22, 2006, MTA filed a notice of a change in counsel.

In a June 7, 2006 NSA, the MTPSC amended the procedural schedule and set an August 10, 2006 hearing date. In a June 7, 2006 NCA, the MTPSC denied reconsideration of TCS' motion to reconsider the MTPSC's March 17, 2006 action that denied TCS' objections to certain MCC data requests.

On May 30, 2006, the MCC filed the direct testimony of Mr. Allen Buckalew. An August 10, 2006 hearing in Harlem was scheduled to commence at 1:00 p.m. at the Harlem City Hall. The following summarizes, in turn, the testimony filed by each of TCS and the MCC.

<u>TCS Testimony: Mr. Richard Stevens</u>

On January 20, 2006, TCS filed the initial direct testimony of Mr. Richard Stevens (Stevens). Stevens is the general manager of each of TCS, TCS' parent company TTCA and of CMC. Stevens reports to the Board of Directors for each entity. His testimony first provides background on TCS. TCS has been a subsidiary of TTCA since 1980. TCS operates its cellular network jointly with Sagebrush Cellular Inc. (SCI). TCS' mission (statement) is to provide access to reliable, high quality telecommunications services at competitive prices. TCS and its affiliates are committed to both customer satisfaction and enhancing their quality of life as well as educational development. TCS is deploying digital service overlays to its analog network in an effort to improve its service and that will comply with FCC requirements (E911).[9] TCS' wireless competitors are Gold Creek Cellular and Alltel. SCI and TCS will not provide wireless service in

[9] TCS explained that its customers will not always have the ability to choose between analog and digital services as it must maintain and operate its analog sites until February 2008 and more likely until 2010 when its digital build-out is complete. DR PSC -010(a)

the same geographic areas in Montana. TCS is not at all opposed to competition among wireless providers in the TTCA and CMC service areas and it never testified that TTCA or CMC could only sustain one competitive ETC (see DR PSC -001). In the study areas of each of TTCA and CMC, there is a third wireless competitor, Chinook Wireless, that provides service in the Fort Benton and Big Timber wire centers (see DR PSC -0008(d)).

Stevens expands on the above to explain the nature of TCS' filing. He lists the wire centers for which TCS seeks ETC designation. These wire centers comprise partial service areas of TCS' affiliates' entire study areas. Whereas it asserts to not cherry pick densely populated areas, TCS' seeks to change the service area boundaries of "one or more" ILECs.**[10]** The proposal only impinges on the Federal universal service fund (FUSF) support that TCS receives and not the FUSF support that TTCA and CMC receive. If the proposal impinged on the "manner" by which the TTCA and CMC receive support, TCS would withdraw its petition.**[11]** Stevens understands, based upon the FCC's Virginia and Highland Cellular decisions, that designating TCS will not impact the total amount of high-cost funding that TTCA and CMC receive. Both companies will

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[10] TCS did not seek "disaggregation" because of both the configuration of its network in combination with the boundaries of its "licenses" and the manner in which other wireless carriers configured their networks made it more sensible to "apply to serve an area that includes only certain wire centers. TCS will not rely on others' networks or use resale and roaming to achieve 98% coverage. TCS does not know the areas that other carriers serve, and advises the MTPSC to consult with the FCC. DR PSC -007(a)
In response to DR PSC -007(c), Stevens modified his above noted testimony to replace the word "disaggregation" with the words "ETC designation" (emphasis added). TCS was asked about the disaggregation options that TTCA and CMC now have; as its initial answers were not responsive TCS was asked again to respond to DR PSC -007(d). TCS' revised response asserts that rural ILECs (e.g., TTCA, CMC) that opted not to select a "disaggregation" path by May 15, 2002, are not permitted to disaggregate unless ordered to do so by a state commission. And, in order for TCS to be designated an ETC within an area that differs from the study area of the incumbent ETC, TCS must request a partial study area designation (citing §54.315 and §54.207, Title 47, C.F.R.) See DR PSC -024(c)). TCS has no current plans to seek to redefine the service areas of other ILECs. DRPSC -007(e) and DR PSC -014

[11] This appears a reference to a decrease in the funding that either ILEC receives. DR PSC -013(c)

continue to have their costs determined based upon their respective entire study areas and not upon the area in TCS' application. Granting of TCS' application will impact future ETC applicants as they "may" apply for designation in the same wire centers for which TCS is designated an ETC (p. 10, line 1).[12] He argues that TCS' petition is not a case of cream skimming noting that TCS' redefinition petition excludes certain of the larger wire centers and includes some of the smaller wire centers in the TTCA and CMC study areas (p. 10).

He emphasized that TCS seeks to be designated an ETC so that it can "ubiquitously" offer high quality wireless service in those select wire centers of TTCA and CMC study areas that fall into the TCS licensed (800 Mhz) cellular area (p. 11).[13] With digital coverage, customers who own digital cellular phones that contain embedded GPS capability would be able to access wireless E911 where TCS has digital towers. TCS commits to add to the existing seven towers in

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[12] Stevens also testified: "I do understand, however, that Triangle and CMC's service areas will change if this application is successful in the sense that future applicants for ETC designation could request to serve only <u>one or more</u> of the wire centers in which TriCom is proposing to provide universal service." (p. 8, lines 5-9, emphasis added)
Stevens revised this testimony to read: "I do understand, however, that future applicants for ETC designation could request to receive USF for the entire study areas of TTCA and/or CMC, or for one or more of the wire centers in which TriCom is proposing to receive universal service." DR PSC -003(c) He revised the testimony to strike "one or more." DR PSC -006(e) He added later that if TCS's petition was approved, a wireless carrier could still apply for ETC designation for whatever redefined service area it thinks it can support. DR PSC -023(c) He also added, based on the FCC's current rules, that other wireless carriers' receipt of FUSFs would not be limited. The successfully petitioning carrier would receive the same per line support for that customer that TTCA receives. DR PSC -023(d)

[13] TCS asserts based on its ability to provide reliable service that it provides "excellent service quality." TCS has no knowledge of whether it provides different service quality than is provided in urban areas. DR PSC -005(a).
TCS was asked if it has a license to serve any geographic areas within the existing TTCA and, or, CMC study (service) areas that are not included in this ETC petition to redefine, to then identify those areas. DR PSC -006(d) In a follow up response, TCS replied that TCS holds 700MHz and/or 1900 Mhz licenses within the following counties that are outside the proposed redefined study area, but either partially or entirely cover the existing TTCA and/or CMC study areas: Hill, Choteau, Judith Basin, Fergus, Meagher, Wheatland, Golden Valley, Sweet Grass and Stillwater counties, adding that wireless licenses follow county lines. DR PSC -024(b)

the TTCA and CMC study areas in order to achieve 98% coverage. Once TCS achieves 98% coverage, it will serve only 31% and 35% respectively of TTCA's and CMC's entire study areas (DR PSC -009(d)).

The balance of Steven's testimony is aligned to track the MTPSC's recently adopted rules for ETCs. For each rule, he identifies the purpose, the scope and the specific means by how TCS intends to comply.

38.5.3201 A.R.M.: Stevens testifies that this rule established the minimum operations, build-out and PI standards. In satisfaction of the rule, he explains that TCS may, as a wireless common carrier, receive FUSF support so long as it offers the nine supported services and advertises the availability of such services using media of general distribution.

38.5.3203 A.R.M.: Stevens understands this rule to place responsibility on TCS to demonstrate satisfaction of the requirements and to establish a prima facie case for designation, which it will do.

38.5.3206 A.R.M.: TCS intends to satisfy this rule by way of complying with 38.5.3209 A.R.M. TCS understands that the MTPSC may revoke an ETC designation.

38.5.3209 A.R.M.: Stevens' review of TCS' compliance with this rule is extensive and involves compliance with the following six minimum requirements. First, TCS will offer the nine services supported by FUSFs (p. 16).[14] TCS will offer voice-grade access to the public switched telecommunications network (PSTN) that can satisfy the -104dBm signal strength standard; TCS "will be able" to provide service that spans the 300 to 3000Htz bandwidth range (p. 21).[15] As for "local usage," TCS' rate plans are "…structured to include a level of usage covered by each of

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[14] These nine services include: voice-grade access to the public switched telecommunications network (PSTN), local usage, dual tone multi-frequency (DTMF) signaling or a functional equivalent, single-party service (or an equivalent), access to each of emergency, operator interexchange (IXC) and directory services and, finally, toll limitation for qualifying low-income consumers. TCS explained the directory and operator service fee basis. DR PSC -019

[15] TCS corrected this testimony to state that TCS is currently providing service that spans the 300 to 3000 Hertz range. DR PSC -010(a)

the individual plans." Plans include blocks of usage that the subscriber may use without incurring incremental charges. The plans will minimally match or exceed the geographic area covered by TTCA and CMC (p. 17).[16] TCS will accomplish its dual tone multi-frequency signaling (or equivalent) obligation by an operating arrangement that it has with SCI. Single party service is achieved in how the network is able to allocate spectrum to establish a dedicated path for the duration of a call. As for E911, TCS is Phase I capable as a CMRS provider. The FCC granted TCS an extension of time to achieve the 95% Global Positioning System (GPS) digital threshold (p. 18).[17] Access to operator, interexchange, including equal access, and directory assistance (DA) will be achieved by way of an operating arrangement with SCI. Toll limitation service for qualifying low-income consumers will be provided by means of prohibiting toll calls.[18]

Second, Stevens commits TCS to advertise annually in the legal section of media of general distribution. Such advertisements will appear in newspapers in the counties of Philips, Blaine and Liberty. TCS will also supply "brochures" to customers and by means of the Internet.

Third, TCS commits to comply with the requirement that it provide the supported services, throughout the redefined service area(s), to all customers making a reasonable request for service, including low-income, low density, rural, insular and high-cost customers. Services and service rates in rural areas will be reasonable comparable to similar services offered in urban

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[16] TCS clarified, somewhat, that the usage block coverage is <u>only with respect to the redefined</u> area. DR PSC -010(c) TCS <u>will not offer unlimited usage</u> as does the incumbent LEC. DR PSC -010(d) TCS' rate plans do not vary with respect to whether the subscriber receives analog or digital service, or whether the service is fixed or mobile wireless. DR PSC -011(e)

[17] The FCC granted TCS an extension until June 2006 to reach the 95% penetration rate of location capable handsets and to become Phase II compliant. DR PSC -011(b) On July 10, 2006 the FCC released an Order that conditionally extended until June 30, 2007 the deadline to be Phase II compliant (CC 94-102). TCS further explained that only a handful of PSAPs are Phase II capable. Upon receipt of a bona fide Phase II request from a PSAP TCS will have 180 days to provide GPS (ALI) information to the PSAP. DR PSC -015(a)

[18] TCS explained when calls including EAS and non-EAS calls would be assessed toll charges. DR PSC -018 and -019

areas.[19] Lifeline service, including Enhanced Lifeline, will be offered to qualifying subscribers under the terms and conditions of Montana's and federal rules.[20] Stevens testified that TCS will also extend and increase coverage from the current 88.7% to 98% of potential subscribers within the redefined service areas within five years of its designation as an ETC (p. 20).

Fourth, Stevens testified that TCS will comply with applicable consumer protection and service quality standards (see earlier discussion of the -104dBm and 300 to 3000 Hz bandwidth).

Fifth, Stevens also testified that TCS will demonstrate compliance with the requirement to offer a local usage plan comparable to that of the ILEC. It will do so by "…defining local usage in the same manner for the same local calling areas as that specified in the TTCA and CMC redefined service areas, at a minimum." TCS may define a broader geographic area for usage blocks which do not result in additional charges beyond a monthly flat rate in the service package that a customer selected (p. 21).

Sixth, Stevens will demonstrate by the initial and ongoing compliance with 38.5.3210 A.R.M that TCS' designation is in the PI. He understands that 38.5.3210 A.R.M to include minimally eleven considerations, or factors (pp. 22-23): (1) TCS has demonstrated its ability to provide the nine supported services; (2) TCS agrees to comply with all laws that govern ETCs and it understands that revocation of its designation is a consequence of not complying; (3) he holds that the TTCA and CMC service areas, as they would be redefined, can sustain one more ETC (TCS presumably). As wireless is a complement to wireline service it is increasingly viewed as an essential service as is wireline service. Mobility will also enhance the public interest; (4)

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[19] TCS has not analyzed which areas are rural and which are urban. It proposes to use the ILEC's (TTCA, CMC) rates to determine if its rates are comparable to those offered in "urban" areas. DR PSC -011(c)

[20] TCS explained that the customer must decide whether to receive the Lifeline discount for their landline or their wireless account. DR PSC -016(a) TCS also documented the number of Tier I through Tier IV Lifeline recipients of TTCA and CMC, noting that Enhanced Lifeline recipients need only live on tribal lands and TCS will offer toll limitation with Lifeline service. DR PSC -016 TCS added that 87% of TTCA's Lifeline recipients live on tribal lands (518 out of 593 recipients). TCS has, however, no information on the penetration of wireline or wireless service on tribal lands. DR PSC 025(d), (e)

designating TCS as an ETC will have a minimal impact on incumbent ETCs, as wireless is viewed as a complement to wireline service; (5) designating TCS an ETC will also have a positive impact on the ability of TCS to offer broadband, advanced and information services, especially to remote and isolated subscribers (p. 25). At present, however, TCS does not offer any advanced data services to its wireless customers (see DR PSC -026(a)). He adds that the "licensed spectrum" that TCS will use is fully compatible with broadband service applications.[21] To achieve 98% coverage will require 14 tower locations in the TTCA/CMC "serving" area where TCS has licenses (p. 25) that, in turn, will enable deployment of "fixed wireless" broadband using, perhaps, the 700 MHz spectrum (with a trial involving SCI);[22] (6) in the event that TTCA "and" CMC

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[21] Although Stevens mentions licensed spectrum and the application mentions the "licensed" area, TCS responds in discovery that no petition was ever made to the FCC for a license as the FCC does not allow carriers to simply petition for the wireless spectrum in a carrier-defined area. TCS acquired licenses by purchasing licenses at FCC auctions and from other carriers. The FCC has not granted TCS a license specifically to serve the redefined service area. (DR PSC -006(a),(b)) TCS was asked to explain what it meant by the statement that TCS wanted to create the most cohesive wireless area possible and not risk losing ETC status due to any failure on the part of another wireless carrier to meet the MTPSC's coverage and service quality standards. That is, TCS was asked to explain how the behavior of another wireless carrier could jeopardize TCS' ETC status. TCS responded that it cannot certify to the MTPSC that it can comply with the ETC rules as it has no control over the service quality or coverage (e.g., -104dBm, 98%) of other wireless carriers. DR PSC -024(a).

If designated an ETC, TCS will begin the process at the FCC to obtain a license to serve the areas needed to attain 98% penetration, which will not involve acquiring licenses from other licensees. (DR PSC -006(c)) He explained that TCS has no plans to acquire licenses held by other carriers. DR PSC -007(b) Instead, TCS intends to use the FCC's ongoing process that allows "eligible" parties to apply for a license in any unserved area. With this process, the FCC's approval is automatic so long as the petitioned area does not overlap the area served by any existing licensed carrier using the same spectrum. DR PSC -008(a) In a later data response, TCS filed a map that identified TCS' license areas. DR PSC -024(d)

TCS also asserts: "TCS wanted to create the most cohesive wireless area possible and not risk losing ETC status due to any failure on the part of another wireless carrier to meet the MTPSC's coverage or service quality standards." (DR PSC -006(a))

[22] TCS clarified that the 700 MHz spectrum is only for data; there is, therefore, no E911 obligation. DR PSC -015(a)

cease to provide equal access TCS will work with SCI to provide equal access (pp. 25-26); (7) TCS intends to use its own facilities to provide service in the redefined service areas; (8) while the impact of TCS' designation is unknown the amount of funding will be "de minimis" given the overall size of the FUSF; [23] (9) Stevens holds that designating TCS as an ETC will clearly support and strengthen the seven universal service principles;[24] (10) TCS' designation will support the public convenience, safety, mobility and provide choice (between wireless and wireline technology). Stevens asserts efficiency will improve for Public Safety Answering Points as improved digital coverage reduces customers' barriers for substituting analog bag phones for digital hand sets (p. 29); (11) and finally, TCS' network is designed, based upon battery power backup and portable generation, to be functional in emergencies.

38.5.3213 A.R.M.: Stevens testified that TCS commitment to achieve 98% coverage within 5 years (Exh #1 to Stevens' testimony represents the coverage and prospective build-out plans) can be achieved with existing and new towers (without having customers purchase hand-held digital phones having 3 watt amplification). It is evident from TCS' analysis, that it must

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[23] TCS documents the FUSFs that each of TTCA and CMC receive and estimates that TCS will receive $30 and $38 respectively for each line served. The FUSFs in these two amounts include High Cost Loop, Safety Net Additive, Local Switching and Interstate Common Line Support DR PSC -013, DR PSC 025(c)

[24] TCS will offer quality services at rates comparable to the incumbent's rates. Its designation will, for example, ensure that "all" regions of the nation have access to both advanced and information services. TCS was unclear about what advanced services it offers and it has no plans at this time to use VoIP. DR PSC -021 The most remote and isolated customers in the TTCA and the CMC redefined service areas will have access to services comparable to those offered in urban areas. TCS will contribute to the FUSF. TTCA and CMC provide access of advanced services to schools, health care providers, local governments and libraries and TCS' designation will further help to support public convenience, safety and mobility requirements in rural areas (p. 28). As for "competitive neutrality," because the industry is in a state of flux it is unknown if wireless will remain a complementary service. Wireless can compete with wireline service however. (p. 29). Although TCS' testimony makes no mention of the principle of affordability, it holds that principle is no less important than any other Section 254 principle. TCS also asserts that it has price plans starting at $20/month and that it will offer low income subscribers Lifeline service at significantly reduced rates. DR PSC -002(a),(b)

extend power, provide transport and construct new towers (p. 30-31).[25] TCS recognized that it may be challenged to achieve 98% coverage. The challenge stems from the geographic topography of the TTCA and CMC redefined service areas.

38.5.3216 A.R.M.: TCS commits to comply with MTPSC reporting requirements and will not need to comply by means of proprietary filings (pp. 33-34).[26]

TCS explained, in response to discovery, how it accounts for profits. First, the profits stay with TCS. Second, the costs that TTCA and CMC incur are not spread to, or recovered from, the rates of TCS, and nor does the converse occur. Third, TCS takes issue with discovery that asks whether it needs FUSFs if it does earn a profit. TCS also explained the difference between patronage and rate credits. The latter is an instant rebate that reduces the current year's net income. A rate credit would have the effect of reducing that year's patronage credit (allocation of year end margins) that would otherwise be allocated to members (see DR PSC -022). TCS explained that "year end margins" for a co-op are analogous to profits for a "for profit" company. And, as TCS is not a co-op it does not distribute patronage credits: the year-end profits remain a part of TCS' equity unless the TCS board of directors declares a dividend. Since 1993, no dividend has been declared (see DR PSC -027).

<u>MCC Testimony: Mr. Allen Buckalew</u>

On May 30, 2006 the MCC filed the direct testimony of its witness Allen Buckalew. The purpose of Buckalew's testimony is to present his analysis of TCS' ETC designation request. In summary, he finds that TCS should not be designated an ETC. After describing the federal

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[25] TCS appears to assert that it has no intention of requiring customers to obtain increased wattage wireless products. DR PSC -012(c)

[26] These include filing: build-out plans at 6 month intervals; maps of actual signal coverage within 60 days of a final order; quarterly reports on the number of unsatisfied service requests (by location) with an explanation for each unfulfilled request; quarterly reports on customer complaints; quarterly reports on FUSF receipts including for Lifeline (Enhanced etc.,) and Link Up and copies of active rate plans.

universal service support mechanism, he explains the deficiencies in TCS' request.

Buckalew recites parts of the '96 Act that bear on universal service. The principal of universal service is to make available to "all" consumers of the nation quality services, including advanced services, at affordable rates. Such services are provided in some rural areas of Montana by means of subsidies by "all" telecommunications users through the federal universal service fund (FUSF). "All telecommunications consumers" contribute to the FUSF through higher rates (p. 5). If a carrier that wants a subsidy demonstrates to the MTPSC that it complies with the standards, it may be an ETC.[27] (p. 5)

As for why ETCs are needed, Buckalew asserts that an ETC agrees to serve any customer, generally in the existing ILEC's study areas. For serving all customers it, in turn, receives FUSFs to subsidize below cost rates (p. 5).[28] He recites the nine services that a ETC must provide (47 C.F.R. §54.101(a)): voice-grade access to the public switched telecommunications network (PSTN), local usage, dual tone multi-frequency (DTMF) signaling or a functional equivalent, single-party service (or an equivalent), access to each of emergency, operator interexchange (IXC) and directory services and, finally, toll limitation for qualifying low-income consumers (pp. 5-6). He adds that pursuant to the '96 Act, the MTPSC must, on its own motion or upon request, designate a common carrier that meets the requirements of Section 214(e) for a service area that the MTPSC designates. The MTPSC shall also permit an eligible carrier to relinquish its ETC designation in an area that is served by more than one eligible carrier (p. 6, lines 11-14).

Buckalew adds that because the MTPSC has already designated "… the existing ILEC…" as an ETC, with only one carrier there may be no competition in certain areas for high cost

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[27] He explains "In addition to the PSC ETC rules, see pages 7-12" of his testimony. DR PSC -028(a)

[28] He explained that it matters how the customer gets the benefits of FUSFs. Customers that need financial assistance can receive that through Lifeline and Link Up programs. Using USF funds to lower rates is only appropriate if rates are high and subscriber penetration is low. The more appropriate long-term use of USF funds should be to offset communications plant costs. For example, providing a dollar subsidy lowers rates for a month, but using the funds to subsidize plant lowers rates for the life of the plant. DR PSC -028(b)

customers. In turn, there are no market forces to drive down costs. He also adds: "Alternatives to the LEC, that is, viable CLECs and wireless carriers need to exist in each exchange area for competition to work for all Montanans" (p. 6). While it is believed that wireless carriers increase the competitive choices in the market, wireless is not a substitute for wireline services. Wireless carriers do not really offer competitive products in the same product market (p. 7, lines 5-8).

Buckalew states that although the FCC finds that wireless carriers must be considered for ETC status, granting such status is a MTPSC decision (p. 7). To do so, TCS' application must be in the PI.[29] He concludes that TCS failed to demonstrate that its application is in the PI. Once TCS shows that it is in the PI, and it agrees to conditions that apply to all ETCs, then TCS should be given ETC status.

Buckalew explained what TCS must agree to in order to both achieve and to continue its ETC status (pp. 7-9). <u>First</u>, it must be willing and able, and must certify its commitment, to provide the defined services that are supported by FUSFs to "any" customer location in the designated area; <u>second</u>, TCS must show that it advertises both the availability of services and its service charges; <u>third</u>, it must provide universal service at a rate not more than the MTPSC-authorized maximum stand-alone rates[30] for the defined basic local exchange telecommunications service and must meet all service quality and provision rules established by the MTPSC for universal service (p. 8, lines 7-11); <u>fourth</u>, it must satisfy its obligation to provide universal service over its own facilities or a combination of its own facilities and resale of another carrier's services over the entire service area. Although TCS has stated that it is not willing to use resale or the facilities of others to serve the entire study area, TCS may satisfy its obligation to provide the defined services, in part, through the lease of UNEs. Since it will not serve every customer, it is not entitled to FUSF support. Likewise, a carrier such as TCS, that leases local facilities from its

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[29] Buckalew held that the MTPSC's ETC rules are binding and must be met. DR PSC -028(c)

[30] He means that TCS must offer service comparable to the cooperative's and at the same rate the co-op charges or a lower flat rate local exchange service. DR PSC -029(c)

parent or an affiliate company, should not be certified as (p. 8, lines 12-14).[31] Finally, TCS must show that provision of its services as an ETC is in the PI.

As for whether TCS's application is in the PI, Buckalew concludes it is not. He lists five deficiencies (pp. 9-12). His overarching concern is that TCS's application seeks designation in less than the "study area."[32] First, TCS has not demonstrated that the PI is served by serving a smaller area than the study area. The MTPSC will not, for example, know the "costs and benefits" of serving an area different than the current study area.[33] Second, TCS must demonstrate with documentation that each line it serves is a new and not a currently served line of the existing ETC. Alternatively, it must demonstrate that the customer is a former ETC customer that does not use ETC services (p. 9, lines 15-20). When the wireline and the wireless services are provided by the same company, as is the case, he sees no reason why the company should get ETC status for both its wireline and wireless operations in the same area. Tapping the FUSF pool twice is not good public policy and is not in the PI. Third, TCS must file with the MTPSC, so long as the market is less than workably competitive, the exact rates it wants to offer for the services included in its universal service offerings.[34] TCS should submit plans for advertising. TCS has nothing to show that it has complied as there is no comparable universal service offering that TCS provides (p. 10, lines 7-13). Fourth, until the MTPSC determines that the "ETC area" is competitive, TCS must submit its rates for MTPSC approval (p. 10, lines 14-21). The rates must be less than or equal to the MTPSC established rate for unlimited local exchange service and

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[31] Leasing from an affiliate provides no additional competitive force. DR PSC -029(e)

[32] As TCS has not justified the change in its study areas the applications are not in the PI as TCS is selectively serving only the areas where it is licensed. In addition there is no cost method that has been presented, in regard to disaggregation as an option, that could support changing the study area. DR -029(a),(b)

[33] He explained that all costs and benefits of serving an area smaller than the study area must be performed. DR -030(a)

[34] A workably competitive market is one for which the market share for local exchange service for the ILEC and the study area has declined to less than 30%. DR PSC -030(c)

lifeline service by the existing ETC. Such rates are the maximum rates that TCS may charge an end user for "basic" service or the supported basic local exchange telecommunications service. He concludes that TCS' rates are higher than the wireline company rates. Fifth, TCS must establish Lifeline and Link Up programs for low-income subscribers and it must file its rates prior to being designated an ETC (p. 11, lines 4-11).

Buckalew testified that because of deficiencies in TCS' application, and the absence of any evidence demonstrating that it is in the PI for TCS to be designated, it is not in the PI for it to be designated as an ETC (pp. 11-12). In addition, there is evidence that it is not in the PI to designate TCS an ETC. To approve of two ETCs in the same area under the same corporate umbrella is not in the PI. He asks who it is that TCS competes with. In addition, TCS' cellular rates are "much higher" than the wireline company's rates. He adds that customers that need subsidized service should not force other consumers to pay for higher cost service that serve the same purpose (p. 12, lines 2-4).[35] In addition, he asserts that TCS only wants to serve 20% of the existing study area, concluding that it is not in the PI to allow TCS to only serve the "higher density areas" in an area (p. 12, lines 5-10).

Finally, Buckalew testified that TCS has shown no willingness to cooperate with the MTPSC. For example, MCC asked TCS to provide annual dividend or cash payment, the so-called "patronage credit," to Triangle's cooperative members.[36] He asserts that it is not in the PI to have low rates as "Triangle" has while at the same time it collects a subsidy and pays customers to take telephone service (p. 12, lines 13-20). He notes his concern with a "collapsing" FUSF system, which puts in danger customers that really need a subsidy. He also notes that in 2005, "Triangle Cooperatives residential customers" paid local rates of $18/mo and received a $71/year

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[35] At the same time he recognizes that wireless is not a substitute for wireline service. Thus, wireless carriers, because of the FCC's decisions, must be allowed into the market, even though the market does not consider the service to be a substitute at this time. DR PSC 031(b)

[36] He does not mention Central Montana as he has no data for it. DR PSC -031(c) The actual numbers are apparently illustrated in responses to MCC -008, and -009 and PSC -031(a). DR PSC 031(d)

payment for taking TCS services (p. 13). Thus, Triangle uses the FUSF system to keep rates low, which promotes universal service. But, it demonstrates the lack of need to subsidize its cellular carrier operations to promote universal service. The cooperative has capital already available for its expansion.

In addition, Buckalew asserts that TCS' response to one of 3-Rivers Coop's data requests (3RC-010), demonstrates a lack of cooperation or a misunderstanding of the rules. Whereas TCS claims no "carrier of last resort" obligations, Section 214(e)(4) provides such an obligation.